IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.292/2004

Office Notes, Memoranda of Coram, appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

CORAM : A.P. Lavande, J.

Dated : October 20 , 2006

P.C.

Heard Mr. B.S. Deshpande, Advocate for the appellant.

This second appeal is directed against judgment and decree dated 12th January, 2004 passed by District Judge, Wardha in Regular Civil Appeal No.245/1999 dismissing the appeal filed by the appellant-plaintiff against judgment and decree dated 20th October 1999 passed by Joint Civil Judge, Jr. Dn. Wardha in Regular Civil Suit; No. 133 of 1986.

The appellant-plaintiff filed the above suit for declaration, permanent injunction and confirmation of possession. The plaintiff

claimed title and possession over the suit site and also claimed easementary right by way of necessity in respect of cart road. The plaintiff sought declaration that the sale deed dated 5.2.1986 executed by defendant no.2 in favour of defendant no.1 was null and void and not binding on the plaintiff. The plaintiff further averred that he had perfected his title over the suit site by way of adverse possession. The suit was contested by defendants and they claimed title to the suit site by virtue of said sale deed.

The trial Court, upon appreciation of the evidence, oral and documentary led by the parties, held that the plaintiff had neither proved his title nor possession over the suit site. The plaintiff claimed title on the basis of partition deed dated 3.2.1973. The trial Court did not accept the partition deed in the absence of any evidence to prove the title of ancestors to the properties forming subject matter of the partition. Insofar as the sale deed dated 19.4.1922 is concerned, the trial Court relied upon the same since the said

document was more than 30 years old. The trial Court held that the plaintiff had also not established easementary right of way by way of necessity in view of the fact that the plaintiff had failed to prove that he was in possession of the suit site. The trial Court also negatived the case set up by the plaintiff that he was in adverse possession of the suit site. The lower appellate Court concurred with the findings given by the trial Court and consequently dismissed the appeal.

I have considered the submissions made by learned counsel appearing for the appellant.

Mr. Deshpande, learned counsel appearing for the appellant submitted that the defendants had not proved their title to the suit site inasmuch as the sale deed was not proved as required under the law. Learned counsel for the appellant relies upon the judgment of this Court in Prakash Cotton Mills Pvt. Ltd. Vs. Municipal Commissioner for Greater Bombay and others (1982 Mh. L.J. 840). According to learned counsel, the

partition deed was duly proved and plaintiff had proved his title and possession in respect of the suit site.

I do not find any infirmity in the judgment given by the trial Court which has been confirmed by the lower appellate Court that the plaintiff has not proved his title to the suit site by way of deed of partition or by way of adverse possession. As rightly observed by the trial Court that the partition deed, by itself, is not sufficient to prove the title of the plaintiff to the suit site. The finding given by the trial Court and confirmed by the lower appellate Court that the plaintiff has not proved either title or possession in respect of the suit site, cannot be said to be perverse having regard to the evidence led by the parties. That being the position, no fault could be found with the dismissal of the suit as ordered by the trial Court. Insofar as the submission of Mr. Deshpande that the defendants had not proved the sale deed is concerned, the same does not advance the case of the plaintiff inasmuch as in order to

succeed in a suit, the plaintiff has to prove his case and cannot succeed on the weakness of the defendant. The judgment in Prakash Cotton Mills Pvt. Ltd. (supra) does not advance the case of the plaintiff.

In my opinion, the findings recorded by both the Courts below are the findings based upon proper appreciation of the evidence on record and as such do not warrant interference in second appeal. In any case, no substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

JUDGE

A.